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May 29, 1998

Re: Inquiry on WV Record Retention Requirements

Dear Ms. :

I am responding to your letter to Rose Heston Conner regarding the effect of West Virginia's record retention requirements on plans by \_\_\_\_\_, Inc. to centrally maintain various loan documents. As \_\_\_\_\_ is not licensed as a second mortgage lender in this state, and this office does not license first mortgage lenders, I presume that you are referring to the records of its subsidiary, \_\_\_\_\_ of West Virginia, Inc., a licensed regulated consumer lender ("RCL") whose offices are permitted to make both first and second mortgage loans in West Virginia. Proceeding, on that premise I have sought to answer each of your questions as follows:

*1) Can we [ -WV] maintain our active unsecured loan files at our \_\_\_\_\_ office located at \_\_\_\_\_, and our inactive unsecured loan files at our off-site facility?*

Yes. W. Va. Code § 46A-4-104(1) states: "Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner which will enable the commissioner to determine whether the licensee is complying with the provisions of this article. The record-keeping system of a licensee shall be sufficient if he makes the required information reasonably available. The records need not be kept in the place of business where regulated consumer loans are made, if the commissioner is given free access to the records wherever located...."

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2) *Does your office allow examiners to travel outside your home state to conduct an examination?*

Yes. W. Va. Code § 46A-4-105(2) provides: "If the lender's records are located outside this state, the lender at his option shall make them available to the commissioner at a convenient location within this state, or pay the reasonable and necessary expenses for the commissioner or his representatives to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf."

3) *Is it necessary for \_\_\_\_\_ to obtain a [regulated consumer loan] license for the location?*

No. You indicate that your affiliate \_\_\_\_\_ [Mortgage Corporation] will begin servicing a portion of \_\_\_\_\_ -WV's loan portfolio, and provide customer contact from its offices at \_\_\_\_\_. Provided that [Mortgage Corporation] is merely the servicer of the loan, and the loan remains on the books of \_\_\_\_\_ -WV, and servicing is done on behalf of and in the name of \_\_\_\_\_ -WV, then no licensing would be necessary.

But, two things must be kept in mind. First, state law would prohibit [Mortgage Corporation] from taking assignment of any regulated consumer loan and undertaking collection without first obtaining its own RCL license. (W. Va. Code § 46A-4-101(2)). Second, [Mortgage Corporation] should contact the West Virginia Department of Tax & Revenue pursuant to W. Va. Code § 47-16-1 et. seq. to see if it must obtain a business franchise registration certificate as a collection agency if it is going to seek to service and collect debt owed to a third party such as \_\_\_\_\_ -WV.

As to the other issues which you raised concerning retaining copies of the records at the in-state branch offices of \_\_\_\_\_ -WV, and whether such copies could be kept on microfilm, I have the following comments: Although the law does not require that copies of the records be maintained at the branch offices, obviously such a practice would be helpful to both consumers and to examiners. State law permits most loan records to be kept on microfilm and other technologies, however, it requires that notes, bonds, mortgages and other securities be maintained as originals. (See W. Va. Code § 46A-1-108).

If you have any questions regarding this letter, please feel free to contact me.

Sincerely,

Timothy C. Winslow  
General Counsel

Cc: